

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARING  
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Liquor License of  
Pizza Luce

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Judge George A. Beck commencing at 1:30 p.m. on November 15, 2001 at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing was held pursuant to a Notice of Hearing received October 22, 2001 and an agreement of the parties to reset the date to November 15, 2001. The record closed on November 15, 2001, at the conclusion of the hearing.

Henry Reimer, Assistant City Attorney, 333 South 7<sup>th</sup> Street, Suite 300, Minneapolis, Minnesota 55402-2453, appear on behalf of the City of Minneapolis (City). Brian Liebo, Attorney at Law, Suite 560, 10400 Viking Drive, Eden Prairie, Minnesota, 55344, appeared on behalf of Pizza Luce', Inc. (Licensee).

**NOTICE**

This report is a recommendation and not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the final decision of the Minneapolis City Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the City Council. The parties should contact the Minneapolis City Council to determine the procedure for filing exceptions or presenting argument before the City Council.

**STATEMENT OF ISSUE**

Whether one of the Licensee's employees served alcoholic beverages to an individual under the age of 21 years of age in violation of Minn. Stat. § 176.340A.503 (2000) and Minneapolis City Ordinance § 370.10, and if so, whether the Licensee's liquor license should be disciplined.

Based upon all the proceedings, the Administrative Law Judges makes the following:

**FINDINGS OF FACT**

1. Dallas Moeller, a student at Metro State University in the law enforcement program, was working with the Officer James F. Archer from the City of Minneapolis Police Department in the Community Response Team - Liquor Enforcement Division on March 31, 2000. Dallas Moeller was employed by the City of Minneapolis to act as a decoy to assist with alcohol sales compliance checks. Dallas Moeller was under 21 years of age as of March 31, 2000. Dallas Moeller was informed by the Minneapolis Police Department to solicit the sale of an alcoholic beverage and to tell the truth when

asked questions by establishments selling liquor and provide his normal driver's license if requested to produce identification by the establishment. Dallas Moeller wore a wireless microphone that transmitted the conversation to a tape recorder in the vehicle outside the establishment.

2. On March 31, 2000 at approximately 6:10 p.m., Officer Archer entered Pizza Luce', Inc. Shortly thereafter, Dallas Moeller entered Pizza Luce', Inc. and proceeded to the bar. When a server approached, Dallas Moeller ordered a Budweiser beer. The server requested identification. Dallas Moeller produced his Driver's License which indicates he is under the age of 21. The server reviewed the identification and returned the identification to Mr. Moeller. The Bar Manager delivered to Dallas Moeller a Budweiser with the cap unscrewed (See Exhibit 3). Dallas Moeller paid with a \$10.00 bill which was previously been provided by the Minneapolis Police Department as "buy" money. The server delivered change to Dallas Moeller. Dallas Moeller then left the premises. Officer Archer, who had been watching the exchange while seated at a table, approached the Bar Manager.

3. Officer Archer then approached the Bar Manager, identified himself, and indicated the patron, Mr. Moeller, was under the age of 21 and was served an alcoholic beverage. Officer Archer requested and received the identification of the server as Shauna Lausham, Bar Manager. In the interim, Dallas Moeller left Pizza Luce', Inc. Officer Archer and another officer (who had been waiting in the police vehicle) then informed Samantha Dixon, Shift Manager, of the failure which occurred in the compliance check. Ms. Dixon requested to see the identification of the decoy, Dallas Moeller. The identification was not produced for Samantha by the officers.

4. Joseph Baier, majority owner of Pizza Luce, approximately one week later, requested a copy of the identification of Dallas Moeller from the Liquor Division of the City of Minneapolis. He was informed that Officer Hepner was not there that day and the identification could not be seen that day. Joseph Baier did not return to see the identification at a later date.

5. The licensee stipulated that there was beer purchased, and that money was received from an individual and placed into the cash register by Pizza Luce', Inc.

6. The time period from March 31, 2000 through the hearing on November 15, 2001 is not an unreasonable delay. The evidence fails to prove that Pizza Luce', Inc. was prejudiced by the delay. Pizza Luce', Inc. provided no evidence of the attempts to locate the Bar Manager in order to obtain her testimony at the administrative hearing and has failed to prove prejudice by the delay.

7. The evidence fails to prove by a preponderance that Dallas Moeller produced to the Bar Manager an identification for which the Bar Manager reasonably and in good faith relied upon representations of proof of age in serving the alcoholic beverage.

Based upon the foregoing Findings of Fact, the Administrative Law Judges makes the following:

### **CONCLUSIONS**

1. The Minneapolis City Council and the Administrative Law Judge have authority to consider the charges brought against the Licensee pursuant to Minn. Stat. §§ 14.55 and 340A.415 and § 362.340 of the Minneapolis Code of Ordinances.

2. The Licensee received timely and appropriate notice of the charges against it and the time and place of the hearing.

3. The City has complied with all relevant substantive and procedural requirements of statute and rule.

4. Pursuant to Minn. Stat. § 340A.503, subd. 2(1), it is unlawful for any person "to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age."

5. Under Minneapolis Ordinance § 370.10, no person licensed by the city or such licensee's employee shall "serve or dispense upon the licensed premises any liquor or beer to any person under the age of twenty-one (21) years."

6. If a licensee fails to comply with an applicable statute or ordinance, the City may take disciplinary action against the license and impose a civil penalty pursuant to Minn. Stat. § 340A.415 and Minneapolis Ordinance § 362.340.

7. The City has the burden of proof to establish, by a preponderance of the evidence, that the Licensee violated the statute and ordinance cited by serving alcoholic beverages to persons under the age of 21 years.

8. The City has established by a preponderance of the evidence that the Licensee, Pizza Luce's, violated the statute and ordinance by serving alcoholic beverages to an individual under the age of 21 years.

9. The numerous statute statutes and Ordinances of the City of Minneapolis provide a regulatory scheme as to imply consent of the license holder for investigation into its compliance with the applicable statutes and codes relating to the sale of alcohol to persons under the age of 21.

10.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED; That the Minneapolis City Council take disciplinary action against the liquor license of Pizza Luce's.

/s/ George A. Beck

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George A. Beck  
Administrative Law Judge

Dated at Minneapolis, Minnesota  
this 12th day of January, 2001.

Recorded: One Tape

## **MEMORANDUM**

§ 340A.503, subd. 6.(b) provides that "it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) in selling, bartering, furnishing, or giving the alcoholic beverage." While this statute applies to the unlawful act of selling alcoholic beverages to an individual under the age of 21 and is a defense in a criminal prosecution, and is not entirely relevant in a license revocation proceeding. However, the defendant has the burden of establishing this affirmative defense. The evidence presented at hearing failed to indicate that the Bar Manager affirmatively relied in good faith upon representations of proof of age which were greater than the age of 21.

The City of Minneapolis has charged the licensee with serving alcoholic beverages to an individual under the age of 21 years in violation of Minn. Stat. § 340A.503, subd. 2(1) and Minneapolis Ordinance § 370.10. Minn. Stat. § 340A.503, subd. 2(1) provides that it is unlawful for any person "to sell, barter, furnish or give alcoholic beverages to a person under 21 years of age." The Minneapolis Ordinance § 370.10 prohibits persons licensed by the city or their employees from serving or dispensing liquor or beer to any person under the age of 21 years.

The City proved that Pizza Luce', Inc. served alcohol to an individual under the age of 21 in violation of both the Minnesota Statute and Minneapolis Ordinance. Dallas Moeller, working as a decoy for the police department, entered Pizza Luce', Inc. A server, the Bar Manager, asked the decoy for his order. Dallas Moeller ordered a Budweiser and the Bar Manager requested to see his identification.

Dallas Moeller testified that as part of the his duties of employment as a decoy for the City of Minneapolis, he was to tell the truth to any questions asked by the establishment and to produce his Minnesota driver's license which clearly reveals his age as under 21. Dallas Moeller produced to the served at Pizza Luce', Inc. his regular driver's license. After reviewing the driver's license, the Bar Manager returned the identification to Mr. Moeller. A Budweiser was served by the Bar Manager who then accepted payment for the beer. After his change was received, Mr. Moeller left the premises. Officer Archer then made spoke to the Bar Manager explaining that the compliance check had been failed.

The Licensee contends that the identification is suspect inasmuch as on two occasions the licensee requested and was denied to review the identification. The policy department did not refuse to allow the licensee to review the identification. At the premises, the licensee was informed that the decoy had left the premises with the identification. When the owner requested to view the identification at the policy department, he was informed that Sargent Heppner was not present and the identification could not be reviewed at that time. At that time, the licensee was not reviewed a review of the identification but needed to comply with the necessary procedural requirements. The licensee did not later attempt to review the identification up through the date of hearing.

The attorney for the licensee argued that Officer Archer had refused to provide access to the identification of Dallas Moeller on March 31, 2000. The record does not support a finding that Officer Archer refused to allow the Shift Manager to see the identification. Dallas Moeller had already vacated the premises and the identification was no longer available at that time. Joseph Baier requested to see a copy of the identification from the licensing division approximately one week later. He was informed that since Officer Heppner was not present that he could not see the identification at that time.

Licensee argued that the failure to provide access to the copy of the identification of the patron to whom alcoholic beverages were sold to verify the underage status, was unfair and contrary to due process. The City claimed that no requests for receipt of this information was made in writing and access was not denied. The licensee claimed that the search and seizure violated the 5<sup>th</sup> amendment inasmuch as no probable cause existed and no warrant was obtained prior to the enforcement action. Pizza Luce', Inc., possessing a liquor license, can reasonable expect

Licensee alleged the failure to the investigating office and of the City of Minneapolis on two occasions to provide proof of identification that the decoy was under the age of 21, provides due process inasmuch as the hearing was the first opportunity to see the evidence and the license was not award of a recording of the transaction.

In addition, the licensee claimed that the search was performed without a warrant in violation of the right to privacy. In Colonnade Catering Corp. v. United States, 397 U.W. 72 (1970), the Supreme Court held that "Congress could statutorily authorize a warrantless search of a liquor licensee's premises." In United States v. Biswell, 406 U.S. 311 (1972), the Court held that businesses licensed as a gun dealer in compliance with the federal Gun Control Act were "pervasively regulated" and "long subject to close supervision and inspection." The rationale behind both of the above cases was that by entering businesses involving close government scrutiny must be fully aware that inspections are likely and entering into this business implies consent to the inspection.

In order to determine whether an agency can engage in a warrantless search of business premises, "it is necessary to examine the statute or regulatory scheme by which the search is conducted and determine whether the method of regulation makes a warrant unnecessary." Donovan v. Dewey, 452 U.S. 594 (1981). The Supreme Court in Donovan determined that "it is the pervasiveness and regularity of the federal regulation that ultimately determines whether a warrant is necessary to render an inspection program reasonable under the Fourth Amendment." The Court must examine the nature and purpose of an administrative program to determine whether the search is reasonable and whether implied consent might be found.

Minn. Stat. § 340A.415 provides for suspension or revocation of the license holder for failure to comply with an applicable statute relating to alcoholic beverages. The City of Minneapolis Chapter 370.20, provides that no person licensed under Chapter 362, 363, or 366 shall permit any person under the age of 18 to sell or serve liquor or beer on the premises. The Code of Ordinances provides a sufficient regulatory scheme as to imply consent of the license holder for a warrantless search to investigate compliance with the applicable statutes and codes relating to the sale of alcohol to persons under the age of 21.

The licensee reasoned that since the patron was representing the ability to purchase and drink alcoholic beverages. The burden of proof by a preponderance of the evidence that the license of proof of legal age to consume alcoholic beverages was reasonably relied upon by the Bartender upon, that ???

Licensee also alleged due process concerns in the hearing being 1 ½ years after the incident and failure to locate a witness. The severe delay should result in dismissal. The basic query is “whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” Fetsch v. Holm, 236 Minn. 163, 52 N.W.2d 113, 115 (1952). The purpose of the doctrine is to “prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.” Aronovitch v. Levy, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953). Evidence of prejudice is an important factor in determining whether the petitioner’s delay is reasonable. Wheeler v. City of Wayzata, 533 N.W.2d 405, 409 (Minn. 1996), *citing*, Aronovitch, *supra*, at 56 N.W.2d at 574.

Licensee claimed that pursuant to 340A.503, subd. 6.(b) that the bartender reasonably relied in good faith on the proof of identification and is a defense against the license revocation.

G.A.B.